

## **PERSONNEL**

### **MERIT SYSTEM BOARD**

#### **Leaves, Hours of Work and Employee Development**

##### **4L Workweek**

##### **Proposed Amendment: N.J.A.C. 4A:6-2.2A**

Authorized By: Merit System Board, Marjorie A. Schwartz, Acting Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d) and 11A:6-1; 29 U.S.C § 207(k).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-393.

A public hearing concerning the proposed amendment will be held on:

Thursday, November 18, 2004, at 3:00 P.M.

Merit System Board Room

44 South Clinton Avenue

Trenton, New Jersey

Please call the Legal Liaison Unit at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by December 17, 2004 to:

Henry Maurer, Director

Merit System Practices and Labor Relations

Department of Personnel

P.O. Box 312

Trenton, New Jersey 08625-0312

The agency proposal follows:

### **Summary**

In accordance with 29 U.S.C. § 207(k), the Commissioner of Personnel may assign job titles in State service that meet certain criteria, including the enforcement of laws, the protection of life

and property, and the power to arrest, to a workweek consisting of a 28-day cycle. See N.J.A.C. 4A:3-5.5(a)2 and 4A:6-2.2A(a). This work cycle, known as the 4L workweek, consists of a minimum of 160 hours. An employee who works more than 160 hours but no more than 171 hours in the cycle may be compensated through either flexible work patterns or comparable amounts of time off. See N.J.A.C. 4A:6-2.2A(b)1. An employee who works more than 171 hours in the cycle is eligible for overtime compensation. See N.J.A.C. 4A:6-2.2(b)2.

Upon reviewing N.J.A.C. 4A:6-2.2A, Law enforcement work schedule (4L): State service, Department of Personnel staff determined that the rule needs to be revised to accurately conform it to the Federal law at 29 U.S.C. § 207(k). While the rule requires that job titles meeting the criteria listed in subsection (a) be assigned the 4L workweek, Federal law merely permits the assignment of such job titles to the 28-day work cycle in instances in which “around the clock” staff coverage is necessary. Additionally, N.J.A.C. 4A:3-5.5(a)2, which provides a table to be used in calculating overtime for employees in an alternate work schedule such as the 4L workweek, states that the “Commissioner may approve an alternate work period and corresponding maximum hour designation for covered law enforcement... employees” (emphasis added). Therefore, the 4L workweek rule at N.J.A.C. 4A:6-2.2A, which requires the assignment of the 4L workweek in certain instances, is not only inconsistent with a Federal statute, but also another rule in Title 4A of the New Jersey Administrative Code.

It is noted that there is no need to assign a 4L workweek if a particular law enforcement agency does not require “around the clock” coverage. For example, the Department of Personnel recently became aware that the State Parole Board need not assign its law enforcement officers to

the 4L workweek because it rarely requires “around the clock” coverage of its operations.

Therefore, the Board proposes an amendment to N.J.A.C. 4A:6-2.2A that would permit, but not require, the assignment of eligible job titles to the 4L workweek.

As the Board has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The Board anticipates a positive social impact from the proposed amendment to N.J.A.C. 4A:6-2.2A. As a result of the amendment, affected employees and appointing authorities in State service would understand that employees serving in job titles eligible for a 4L workweek could be assigned to such a work cycle, but only where appropriate based on the operational needs of the appointing authority. However, whether or not a job title is assigned to the 4L workweek, the employee’s right to receive overtime compensation for work performed beyond the normal workweek would remain intact.

#### Economic Impact

It is not anticipated that the proposed amendment to N.J.A.C. 4A:6-2.2A would result in an economic cost or benefit for conforming the rule with Federal law. If operational reasons call for an odd work schedule (such as 24 hours on and 48 hours off), overtime compensation need not be paid unless the employee works beyond this schedule. Conversely, if operational reasons call for a standard, 40-hour workweek, overtime compensation need not be paid unless the employee works

beyond that schedule.

#### Federal Standards Statement

A Federal standards analysis is not necessary for the proposed amendment to N.J.A.C. 4A:6-2.2A, as it meets, but does not exceed, Federal statutory provisions at 29 U.S.C. § 207(k) concerning the establishment of a 28-day work cycle. Specifically, the proposed amendment would conform the rule to the Federal statute by making the 28-day work cycle (known as the 4L workweek in merit system rules), optional for eligible job titles, but not mandatory.

#### Jobs Impact

It is not anticipated that the proposed amendment would have any jobs impact. No jobs would be created or lost due to the proposed amendment.

#### Agriculture Industry Impact

It is not anticipated that the proposed amendment would have any agriculture industry impact. The proposed amendment concerns establishment of the 4L workweek for certain law enforcement employees in State service.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment would regulate employment in the public sector.

Smart Growth Impact

It is not anticipated that the proposed amendment would have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan as defined under Executive Order No. 4 (2002).

Full text of the proposal follows (addition indicated in boldface thus; deletion indicated in brackets [thus]):

**4A:6-2.2A Law enforcement work schedule (4L): State service**

(a) Job titles which meet all of the following criteria [shall] may be assigned an alternate work schedule consisting of a 28-day cycle, pursuant to 29 U.S.C. § 207(k):

1. Employees are uniformed or plainclothes members of a body of officers and subordinates;
2. Employees are empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury and to prevent and detect crimes;
3. Employees have the power to arrest; and
4. Employees have participated in a special course of instruction or study (or will undergo on-the-job training) which typically includes: self defense, physical training, firearm proficiency,

criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics.

(b) Job titles which meet the criteria in (a) above and which are assigned such an alternate work schedule shall be designated 4L. All employees who meet the criteria are considered engaged in law enforcement activities regardless of their rank or their status as trainee, probationary or permanent employees.

1. The tour of duty within the 28 day cycle shall total at least 160 hours. At the discretion of the appointing authority, employees who work more than 160 hours may be compensated through either a provision for flexible work patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of such additional work time.

2. Within the 28 day cycle, employees can work a maximum of 171 hours. Employees may work more than 40 hours in a week without incurring overtime, so long as they do not work more than 171 hours within the 28 day cycle. Overtime begins on the 172nd hour.

3. Except for the special eligibility requirements set forth above, overtime compensation shall be paid in the same manner as employees in 40 hour workweek titles. See N.J.A.C. 4A:3-5.5(b).